

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

REGINALD EDWARD SPEARMAN,

Plaintiff,

v.

DEPARTMENT OF SATE HOSPITALS,
et al.,

Defendants.

No. 2:21-cv-01280-CKD P

ORDER

Plaintiff is a county inmate proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by

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the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

I. Screening Requirement

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

In order to avoid dismissal for failure to state a claim a complaint must contain more than "naked assertions," "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

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II. Allegations in the Complaint

At the time of filing the complaint, plaintiff was a pretrial detainee confined at the Sacramento County Main Jail. Plaintiff alleges that his right to a speedy trial was violated by the Department of State Hospitals (“DSH”) after he was found incompetent to stand trial. He identifies the DSH and the County of Sacramento as defendants in this civil action. Plaintiff contends that the DSH waited more than 28 days to transfer him to a state hospital in violation of a “court mandate.” As a result of this delay, plaintiff contends that he was housed in an overcrowded local jail where he contracted COVID-19.

III. Legal Standards

The following legal standards are being provided to plaintiff based on his pro se status as well as the nature of the allegations in his complaint.

A. Linkage Requirement

The civil rights statute requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must link each named defendant with some affirmative act or omission that demonstrates a violation of plaintiff’s federal rights.

B. Eleventh Amendment

In his complaint plaintiff has named the Department of State Hospitals as one of the defendants. However, the Eleventh Amendment serves as a jurisdictional bar to suits brought by private parties against a state or state agency unless the state or the agency consents to such suit. See Quern v. Jordan, 440 U.S. 332 (1979); Alabama v. Pugh, 438 U.S. 781 (1978) (per curiam); Jackson v. Hayakawa, 682 F.2d 1344, 1349-50 (9th Cir. 1982).

C. Municipal Policy or Custom

In order to state a claim against a municipality such as the County of Sacramento, a plaintiff must allege that a specific “policy or custom” of the agency was the “moving force” for the challenged constitutional violation in deliberate indifference to plaintiff’s rights. Monell v. Dep’t. of Social Services, 436 U.S. 658, 694 (1978). Furthermore, a local governmental entity may not be liable based on a theory of respondeat superior liability due to the individual actions of its subordinate employees. Monell, 436 U.S. at 694.

D. Conditions of Confinement

“The more protective fourteenth amendment standard applies to conditions of confinement when detainees ... have not been convicted of a crime.” Jones v. Blanas, 393 F.3d 918, 931 (9th Cir. 2004) (internal quotations and citations omitted). A prison official’s failure to protect a pretrial detainee is actionable if four conditions are met:

1. The defendant made an intentional decision with respect to the conditions under which the plaintiff was confined;
2. Those conditions put the plaintiff at substantial risk of suffering serious harm;
3. The defendant did not take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant’s conduct obvious; and
4. By not taking such measures, the defendant caused the plaintiff’s injuries.

Id. at 1071. As to the third element, the defendant’s conduct must be objectively unreasonable.

Id.

E. Habeas Versus § 1983 Action

Plaintiff has filed a § 1983 action challenging his ongoing confinement based on an asserted speedy trial violation. However, when a state prisoner challenges the legality of his custody and the relief he seeks is the determination of his entitlement to an earlier or immediate release, his sole federal remedy is a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). Additionally, a federal habeas corpus action is only available once plaintiff has been convicted and has exhausted his state court remedies. See 28

1 U.S.C. § 2254(b)(1)(A).

2 **IV. Analysis**

3 The court has reviewed plaintiff's complaint and finds that it fails to state a claim upon
4 which relief can be granted under federal law. In the instant case, the State of California has not
5 consented to suit. Accordingly, plaintiff's claims against the Department of State Hospitals are
6 barred by the Eleventh Amendment and must be dismissed. Furthermore, plaintiff does not state
7 any Monell claim against the County of Sacramento because he does not identify any custom or
8 policy that was the moving force for the alleged constitutional violations. For all these reasons,
9 plaintiff's complaint must be dismissed. The court will, however, grant leave to file an amended
10 complaint.

11 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
12 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.
13 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in
14 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C.
15 § 1983 unless there is some affirmative link or connection between a defendant's actions and the
16 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory
17 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
18 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

19 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
20 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
21 complaint be complete in itself without reference to any prior pleading. This is because, as a
22 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
23 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
24 longer serves any function in the case. Therefore, in an amended complaint, as in an original
25 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

26 **V. Plain Language Summary for Pro Se Party**

27 The following information is meant to explain this order in plain English and is not
28 intended as legal advice.

1 The court has reviewed the allegations in your complaint and determined that they do not
2 state any claim against the defendants. Your complaint is being dismissed, but you are being
3 given the chance to fix the problems identified in this screening order.

4 Although you are not required to do so, you may file an amended complaint within 30
5 days from the date of this order. If you choose to file an amended complaint, pay particular
6 attention to the legal standards identified in this order which may apply to your claims.

7 In accordance with the above, IT IS HEREBY ORDERED that:

8 1. Plaintiff's motions for leave to proceed in forma pauperis (ECF Nos. 2, 8) are granted.

9 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
10 shall be collected and paid in accordance with this court's order to the Sacramento County Sheriff
11 filed concurrently herewith.

12 3. Plaintiff's complaint is dismissed.

13 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
14 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
15 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
16 number assigned this case and must be labeled "Amended Complaint." Failure to file an
17 amended complaint in accordance with this order will result in a recommendation that this action
18 be dismissed.

19 Dated: November 16, 2021



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE